IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29/11/2004

Coram

The Honourable Mr. Justice V. KANAGARAJ
and
The Honourable Mr. Justice T.V. MASILAMANI

C.A. No.1238 of 2002

Ravikumar @ Kutti Ravi .. Appellant

-vs-

State represented by
the Inspector of Police,
Bagalur,
Dharmapuri District. .. Respondent

Criminal Appeal against the judgment dated 24.4.2002 made in S.C.No.124 of 2000 on the file of the II Additional District Sessions Judge cum Chief Judicial Magistrate, Krishnagiri.

!For Appellant : Mr.V.Vibhishanan

^For Respondent : Mr.A.Kandasamy,
Addl.Public Prosecutor.

:JUDGMENT

T.V. MASILAMANI, J.

The appellant is the accused in S.C.No.124 of 2000 on the file of the II Additional Sessions Judge cum Chief Judicial Magistrate, Krishnagiri and he has been convicted and sentenced by the Sessions Judge under Section 302 I.P.C. to undergo imprisonment for life and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for 3 months and under Section 449 I.P.C. to undergo imprisonment for 10 years and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for 3 months. This appeal is filed challenging the said conviction and sentence.

2. The charge against the appellant/accused is as follows:-
On 15.1.1998 at about 5.00 P.M. the accused Ravikumar @ Kutti Ravi along with his girl friend Malla @ Mallesi committed house trespass with

the intention to commit the offence of outrage of modesty of Pushpa, the deceased in this case and therefore the accused is liable to be punished under Section 449 I.P.C. In the course of the same occurrence, the accused had at the instigation of the said Mala @ Mallesi poured kerosene over the deceased Puspha and set her on fire and on account of the burn injuries sustained, the deceased Pushpa died on 2 1.1.1998 at 4.30 P.M. at Government Hospital, Hosur and thereby the accused committed the offence under Section 302 I.P.C.

3. Since the other accused, Mala @ Mallesi was a juvenile aged 15 years as per the report of the Radiologist, her case had been split up and separate trial was ordered by the learned Sessions Judge.

4. When the accused was questioned with reference to the charge, he denied the same and therefore the prosecution examined 14 witnesses, filed 13 documents and produced 5 material objects.

5. The case of the prosecution as discerned from the evidence may be set out briefly as follows:-

(a) The deceased Pushpa and her brother P.W.3 Subburaj and P.W.2 Radha, wife of P.W.3 were residing at Bagalur. On 15.1.1998 at about 5 .00 P.M., when P.W.2 was returning from shandy, she heard the hue and cry from the house and when she rushed towards the house, she had seen the accused running from that place. Further she had witnessed the deceased running from the house with flames on her cloths and on account of the alarm raised by both P.W.2 and the deceased, the neighbours came there and put off the fire with a help of blanket and subsequently, the injured Pushpa narrated the incident to both P.W.2 and P.W.3. She was thereafter taken to the Government Hospital, Hosur for treatment and P.W.9, Doctor admitted her to the hospital at 5.45 P.M. for treatment. At that time, she was co nscious and also informed the doctor about the occurrence.

(b) P.W.9 gave the accident intimation, Ex.P-5 to the police and immediately thereafter, the Head Constable Govindaraj (since deceased) came to the hospital and recorded the statement of the deceased, Ex. P-9 in the presence of P.W.9, who had also given the certificate under Ex.P-6 in the said statement that she was conscious at that time and that he had translated her version given in Telugu into Tamil so as to enable the Constable to record the statement.

(c) P.W.11, the Sub Inspector of Police, Bagalur Police Station received the statement of the deceased, Ex.P-9 and registered the case in Cr.No.15/1998 under Section 376 r/w 511 and 307 I.P.C. and prepared the printed form of F.I.R. under Ex.P-10 and forwarded the same to the Judicial Magistrate concerned and copies thereof to his higher officials.

(d) In the meanwhile, after receiving the intimation from P.W.9, to record the dying declaration, P.W.8, the Judicial Magistrate went to the hospital on 15.1.1998 at 6.30 P.M. and recorded the dying declaration of the deceased Pushpa at 6.35 P.M. The dying declaration given by her is marked as Ex.P-4 and P.W.9, doctor who was on duty at that time translated the

declaration given in Telugu into Tamil and also certified that she was in a conscious and fit state of mind to give declaration.
(e) P.W.13, Inspector of Police, Sundar Rajan (since deceased) having received Exs.P-9 and P-10 on 15.1.1998 took up the investigation on 16.1.1998 at 6.30 A.M., he visited the place of occurrence in the presence of P.W.4 and another and prepared the observation mahazar, Ex.P-1 and drew the rough sketch Ex.P-11. He recovered M.Os.1 to 5 from the place of occurrence in the presence of the same witnesses under cover of Ex.P-2. He examined the injured Pushpa along with other witnesses P.W.1, P.W.2, P.W.3 and P.W.15 and recorded their statements. Thereafter, on information he went and arrested the accused herein and the juvenile accused, Mala @ Mallesi near Katchanur bus stand in the presence of P.W.4 and Subramanian. He examined the accused herein and obtained his voluntary confession in the presence of the same witnesses and thereafter he brought the accused and put them in police custody.

(f) The injured Pushpa died on 21.1.1998 at 4.30 P.M. in the Government Hospital, Hosur and P.W.12, the Inspector of Police altered the Section and sent express F.I.R., Ex.P-13 to the Judicial Magistrate and copies thereof to the higher officials and thereafter he conducted inquest on the dead body of the deceased Pupha in the Government Hospital, Hosur in the presence of panchayatdars and prepared the inquest report, Ex.P-12 on the same day between 8.00 A.M. and 10.30 A.M.
(g) P.W.10, Autopsy Surgeon, after receipt of requisition, Ex.P-7, conducted post-mortem on the body of the deceased Pushpa at 2.00 P.M. on 22.1.1998 and issued the post-mortem certificate, Ex.P-8. The injuries found on the deceased are as follows:-

"External injuries:
Grade 4 dermo epidermal burns extending as shown in figure, In front of chest and abdomen burns upto muscle deep - Deep burns. Pus formation on both axilla and in thigh region present"

According to P.W.10, the deceased would appear to have died about 20 to 23 hours prior to autopsy due to septicemia. He has opined that on account 90% burn injuries suffered by the injured, septicemia would have been caused and in the ordinary course of events, the same could have caused her death.

(h) Further, P.W.12 sent both the accused to the hospital on 25.1.1 998 to undergo tests with reference to the age as well as the potency of the accused herein. He examined the witnesses and recorded their statements.

(i) P.W.14, the Inspector of Police, who took charge from P.W.12, examined the other witnesses on 12.8.1998 and recorded their statements. On 9.9.1998, he examined P.W.5, P.W.6, P.W.9 and other witnesses and recorded their statements. After obtaining the opinion from the Public Prosecutor, he filed separate final reports against the accused herein as well

as the juvenile accused Mala @ Mallesi on 18.9.1998 under Sections 449, 554 and 302 I.P.C.

6. When the accused was questioned with reference to the incriminating circumstances in the evidence, he denied the same. However, he has marked the accident register copy as Ex.D-1 on the side of the defence and no oral evidence has been adduced by him.

7. The learned Additional Sessions Judge having analysed the evidence of both sides, arrived at the conclusion that the prosecution has succeeded in proving the guilt of the accused and convicted and sentenced him under Sections 302 and 449 I.P.C. as referred to above.

8. The learned counsel appearing for the appellant/accused has argued that the trial Court failed to appreciate the fact that the dying declaration of the deceased was not free from suspicion and that the accused was falsely implicated in the commission of the offence. The evidence adduced by the prosecution suffered from inherent improbabilities and contradictions and therefore he has argued that the defence version that the deceased immolated herself by pouring kerosene by setting fire is acceptable. According to him, the doctor, who admitted the deceased for treatment, had also given such opinion (vide) Ex. D-1. He has further contended that the learned Sessions Judge erred in accepting the interested testimony of P.W.2, sister-in-law of the deceased. Similarly, there are vital contradictions between the medical and other evidence on record. However, he has lastly submitted that the sentence imposed by the trial Court is excessive.

9. In the above circumstances, the point for consideration is whether the prosecution has succeeded in establishing the guilt of the appellant/accused herein beyond all reasonable doubt.

10. The death of the accused due to 90% burn injuries and the consequent septicemia is spoken to by P.W.10, doctor, who conducted the post-mortem and issued the post-mortem certificate, Ex.P-8. As referred to above, his evidence as well as Ex.P-8 would reveal that in the normal course of events, the nature of burn injuries to the extent of 9 0% all over the body of the deceased would have resulted in septicemia and that on account of such malady, she would have succumbed to such injuries about 20 to 23 hours prior to autopsy. We are therefore of the view that the deceased had met with the unnatural death on account of 90% burn injuries all over her body and the resultant septicemia.

11. The relationship between the deceased Pushpa on the one hand and P.W.2 and P.W.3 on the other is not in dispute. According to P.Ws.2 and 3, immediately after the occurrence, the deceased narrated about the occurrence and she told that both the accused herein and the juvenile accused trespassed into house of the deceased and that since the deceased was not amenable to the attempt made by the accused herein to molest her, both the accused beat her and that the accused herein poured all over her body the kerosene available in the house and set fire. Further, according to them, on account of the hue and cry, both of them escaped and ran away from the place of occurrence. Though

P.W.3 had not seen the deceased running with flames immediately after the occurrence, P.W.2 had witnessed the same and therefore the learned counsel for the accused has argued at the outset that their evidence is interested as they are closely related to the deceased and that no reliance can be placed on such testimony. He has also drawn our attention to Ex.D-1, accident register copy issued by P.W.9 doctor, who treated the deceased for her burn injuries immediately after the occurrence and contended that the words that the deceased immolated herself had been written and struck off and that since no plausible explanation is offered by the prosecution on this aspect of the matter, a grave doubt has arisen with reference to the evidence of P.W.9 also.

12. On the contrary, the learned Additional Public Prosecutor has drawn our attention to the evidence of P.W.9 and Ex.D-1 and invited our keen attention to the oral testimony of P.W.1 and Ex.D-1 in entirety so as to appreciate the evidence. It is no doubt true that P.W.9 has admitted in the cross-examination that the deceased immolated herself had been written in the accident register and struck off (vide) Ex.D-1. He would contend that the father of the deceased, who accompanied her informed him that he was not aware how the occurrence took place. It is therefore clear that due to lack of any information forthcoming from the injured and considering the statement of her father that he was not aware of the reason for the occurrence, P.W.9, who had initially written that the injured immolated herself, had struck off such words later. Hence, we are of the considered view that nothing turns around such circumstance either in favour of the prosecution or to the benefit of the accused. Therefore, we are of the opinion that the earliest version of the deceased given to P.W.2, her sisterin-law could be the best version available in this case.

13. It is not in controversy that the deceased was residing along with P.W.2 and P.W.3 in the same house and on the date of occurrence, P.W.2 had gone to shandy and returned at or about the time of occurrence and saw the accused running from the scene of occurrence. P.W.1, the neighbour, though turned hostile, would contend categorically that P.W.2, P.W.3 and the deceased were residing in the same house and the day of occurrence was a shandy day, for the people in and around the place of occurrence. It is well settled by preponderance of decisions that in a case of this nature, only quality of the evidence has to be weighed and not the number of witnesses who speak about the occurrence has to be taken into account and in that view of the matter, we are of the considered view that the learned Sessions Judge was correct in accepting the evidence of P.W.2 and P.W.3 in rendering the finding of conviction.

14. The learned counsel for the accused has relied on the circumstance as seen from the evidence of P.W.8, Judicial Magistrate and Ex.P-4 dying declaration that the presence of three accused was mentioned by the deceased contrary to the charge levelled against the accused by the prosecution whereunder only two accused were alleged to have committed the offence and argued that such contrary version in the dying declaration of the deceased would throw a strong suspicion against such statement. He has placed reliance on the decision CHINNAMMA v. STATE OF KERALA (2004 (2) SUPREME 251) in support of his further argument that when dying declarations contradict

each other, a strong and reasonable suspicion is created in the truthfulness of the version put forth by the prosecution and that therefore such declaration could not be acted upon to base the conviction.

15. Per contra, the learned Additional Public Prosecutor would draw our attention to Ex.P-4 and the evidence of P.W.8 and contended that the names of Ravi Kumar and Mallesi would indicate Ravi Kumar @ Kutty Ravi, the accused herein and Mala @ Mallesi, the juvenile accused only and therefore he has contended that while recording the declaration of the deceased, the Judicial Magistrate could not have thought that both the names of Ravi-Kumar relate to the same accused. It is therefore urged by him that such mistake committed while recording the dying declaration would not affect the basis of the prosecution case.

16. After a careful reading of the evidence of P.W.8 and Ex.P-4, we are of the considered opinion that the learned Judicial Magistrate while recording the confession would have perhaps thought that the names of Ravi-Kumar relate to two separate individuals and hence we consider that such mistake which occurred while recording the dying declaration would not in any way affect the basis of the prosecution case.

17. In view of the above reasons with reference to the dying declaration, the ratio laid down by the Hon'ble Supreme Court in the decision referred supra is in our opinion not applicable to the facts of the present case for the simple reason that in that case, even in the evidence let in by the prosecution, it was brought out that the dying declaration was recorded after six days of the occurrence and during that time, there were possibilities for implicating the accused falsely by means of the dying declaration. Similarly, the evidence in that case would indicate the fact that the declaration was not definite about the assailants so as to foist the criminal liability on the accused and therefore, the Apex Court laid down the ratio referred to above. On the contrary, the facts of this case as narrated above would indicate clearly that even the mistake in recording the name of the accused found in the dying declaration, Ex.P-4 is not very material so as to affect the root of the case and therefore we find that the ratio laid down in the said decision cannot be invoked in this case. Hence, we are unable to endorse the view of the learned counsel for the accused with reference to the dying declaration, Ex.P-4 made by the deceased.

18. Moreover, it is nobody's case that there were two separate individuals known as Ravi and Kumar pitched against the deceased at any point of time and such circumstance is supported by the suggestion put to the prosecution witnesses on the side of defence that since the accused herein refused to marry the deceased and got engaged to the juvenile accused, the deceased immolated herself by pouring kerosene all over her body and setting fire. Hence, we are of the view that the contention put forth by the learned counsel for the accused in this respect is not acceptable.

19. The evidence of P.W.9 the doctor, who sent intimation to P.W.8, Judicial Magistrate deserves acceptance for the reason that as per the intimation Ex.P-3 the same was sent at 5.45 P.M. on 15.1.1998 (i.e.)

immediately after admitting the injured to the hospital for treatment and thereupon P.W.8 came to the hospital at 6.30 P.M. and recorded the dying declaration, Ex.P-4 between 6.35 P.M. and 7.30 P.M. in the presence of P.W.9. Hence, we find that the evidence of both P.W.8 and P.W.9 coupled with Ex.P-4 would indicate clearly that the declaration given by the deceased should have been a true and voluntary one so as to inspire confidence.

20. The statement given by the deceased to the Head Constable (Govindaraj), under Ex.P-9 immediately after recording the dying declaration by P.W.8 Judicial Magistrate would also lend support to the view that the said statement has become another dying declaration of Pushpa and the same has corroborated the earlier declaration under Ex.P-4 given by the deceased to P.W.8. Hence, in view of such circumstance, it cannot be said that there are contrary dying declarations given by the deceased in this case.

21. Similarly, the next contention of the learned counsel for the accused is that even according to the medical evidence, the deceased died on account of septicemia and that therefore the possibility of her survival was more if proper medical treatment had been given to her. Hence, he has urged that the death of the deceased is not proximate to the cause of burn injuries sustained by her. On the contrary, the evidence of P.W.10, Autopsy Surgeon is pointed out by the learned Additional Public Prosecutor in support of his contention that the extent of 90% burn injuries suffered by the deceased had resulted in septicemia in spite of the treatment given by the doctors and therefore he has urged that even the medical evidence corroborates the other evidence let in by the prosecution so as to justify the conviction rendered by the trial Court. On a careful consideration of the rival contentions of both sides on this aspect of the matter, we are inclined to hold that septicemia is the resultant malady occurred due to 90% burn injuries, though the injured was under treatment in the Government Hospital, Hosur and therefore, we are inclined to accept the view of the prosecution side and render a finding that the medical evidence has fully corroborated the other evidence let in by the prosecution with reference to the occurrence.

22. The last contention put forth by the learned counsel for the accused that the sentence imposed by the trial Court is excessive cannot also be countenanced by us for the simple reason that the learned Additional Sessions Judge, while analysing the gravity of the offence committed by the accused, rendered the finding of conviction and sentence in a proper perspective on the basis of the evidence let in by the prosecution. The circumstance that an innocent girl was molested and burnt alive would demonstrate that the gravity of the offence perpetrated against the weaker sex, demands proper punishment so as to render justice in the case on hand. In view of such aspect of the matter and in the light of the totality of the evidence, we are of the considered view that the sentence imposed upon the accused would commensurate with the offence committed and therefore the same is justified. For the above reasons, we find no merit in the appeal and the same is liable to be dismissed.

23. Thus, the appeal is dismissed confirming the judgment of conviction and sentence passed by the learned II Additional Sessions Judge cum

Chief Judicial Magistrate, Krishnagiri in S.C.No.124 of 2000 dated 24.4.2002.

Index : Yes
Website: Yes

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To

1. The II Addl. District and Sessions Judge and Chief
Judicial Magistrate, Krishnagiri.
2. -do- through the Principal Sessions Judge, Krishnagiri.
3. The District Collector, Dharmapuri District, Krishnagiri.
4. The Director General of Police, Chennai.
5. The Public Prosecutor, High Court, Chennai.
6. The Superintendent, Central Prison, Vellore.
7. The Inspector of Police, Bagalur Police Station,
Dharmapuri District.